

Via Electronic Mail Only

The Honorable Christopher P. Pell, Deputy Chief Administrative Law Judge
Pennsylvania Public Utility Commission
801 Market Street
Philadelphia PA 19107

The Honorable John Coogan
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, 2nd Floor
Harrisburg, PA 17120

Re: Pennsylvania Public Utility Commission
v.
Columbia Gas of Pennsylvania, Inc.

Docket No. R-2022-3031211

Dear Judge Pell and Judge Coogan:

Attached is my objection document to both settlement agreements.

Copies have been served on the parties as indicated on the enclosed Certificate of Service.

Respectfully submitted,



Richard C Culbertson
1430 Bower Hill Road
Pittsburgh, PA 15243
September 12, 2022

eFile

BEFORE THE PENNSYLVANIA PUBLIC UTILITY COMMISSION

Pennsylvania Public Utility Commission	:	R-2022-3031211
Office of Small Business Advocate	:	C-2022-3031632
Office of Consumer Advocate	:	C-2022-3031767
Pennsylvania State University	:	C-2022-3031957
Columbia Industrial Intervenors	:	C-2022-3032178
Jose A. Serrano	:	C-2022-3031821
Constance Wile	:	C-2022-3031749
Richard C. Culbertson	:	C-2022-3032203
	:	
v.	:	
	:	
Columbia Gas of Pennsylvania, Inc	:	

This Document is an objection to both settlement agreements the Joint Petition for Partial Settlement and the Joint Petition for Non-Unanimous Settlement Regarding Revenue Allocation and Rate Design.

A. Facts in the record,

1. *“PENNSYLVANIA PUBLIC UTILITY COMMISSION HARRISBURG, PA 17120 Public Meeting held April 14, 2022 Commissioners Present: Gladys Brown Dutrieuille, Chairman John F. Coleman, Jr., Vice Chairman Ralph V. Yanora Pennsylvania Public Utility Commission v. Columbia Gas of Pennsylvania, Inc. Docket Number: R-2022-3031211 ORDER BY THE COMMISSION: On March 18, 2022, Columbia Gas of Pennsylvania, Inc. (Columbia), Utility Code 120700, filed Supplement No. 337 to Tariff Gas Pa. P.U.C. No. 9 to become effective May 17, 2022, containing proposed changes in rates, rules, and regulations calculated to produce \$82.2 million in additional annual revenues. Under the*

proposed increase, the total bill for a residential customer who purchases 70 therms of gas from Columbia per month, would increase from \$123.24 to \$135.67 per month, or by 10.09%. [Columbia has also proposed an increase in the monthly residential customer charge from \$16.75 to \$24.75 or about a 48 percent increase.] The Office of Small Business Advocate filed a formal complaint on March 28, 2022. Various oppositions were also filed. Columbia stated that the requested increase in its base rates is necessary due to Columbia's ongoing investment to enhance its distribution system through the replacement of pipe and related appurtenances that are reaching the end of their useful lives ... [Emphasis added] [“Columbia seeks Commission approval to increase its base rates to recover the revenue requirement associated with the capital Columbia has invested, and will continue to invest, in its facilities as part of its continued accelerated pipeline replacement program”]¹

*Investigation and analysis of this proposed tariff filing and the supporting data indicate that the proposed changes in rates, rules, and regulations **may be unlawful, unjust, unreasonable, and contrary to the public interest.** It also appears that consideration should be given to the reasonableness of Columbia's existing rates, rules, and regulations;*
[Emphasis added]

THEREFORE, IT IS ORDERED:

1. That an investigation on Commission motion be, and hereby is, instituted to determine the lawfulness, justness, and reasonableness of the rates, rules, and regulations contained

¹ <https://www.puc.pa.gov/pcdocs/1737837.pdf> M. Kempic, Statement No. 1. Page 5 of 52

in the proposed Supplement No. 337 to Tariff Gas Pa. P.U.C. No. 9.

4. That this investigation shall include consideration of the lawfulness, justness, and reasonableness of the Columbia Gas of Pennsylvania, Inc.'s existing rates, rules, and regulations.

5. That the case be assigned to the Office of Administrative Law Judge for the prompt scheduling of such hearings as may be necessary culminating in the issuance of a Recommended Decision. [Emphasis added]

BY THE COMMISSION,

ORDER ADOPTED: April 14, 2022”

In summary: The Commission asserts “*Investigation and analysis of this proposed tariff filing and the supporting data indicate that the proposed changes in rates, rules, and regulations may be unlawful, unjust, unreasonable and orders an investigation.* The Commission did not order a settlement without an investigation.

2. On April 15, 2022, the Chair or the Commission issued on behalf of the Commission the annual Rate Comparison Report to the Governor, Lieutenant Governor and Members of the General Assembly. There was not an issued a Press Release as normally occurs on issues that may be of public concern. Distribution rates are of high concern to rate payers. This report clearly shows, in comparison with other peer natural gas distributions companies, Columbia’s rates are significantly higher than others.
3. On April 28, 2022 Culbertson filed a detailed formal complaint in the rate case. ²

² <https://www.puc.pa.gov/pcdocs/1743057.pdf>

4. On May 2, 2022 Richard C. Culbertson filed a Motion to Suspend Columbia Gas of Pennsylvania Rate Case Hearings, Docket No. R-2022-3031211, Until Ordered Investigations, and Pennsylvania Constitutionally Required and Pennsylvania statutorily required financial and performance Audits have been diligently planned, performed and completed by a competent, independent and experienced audit firm that can provide the status – material weaknesses, significant deficiencies and a level of assurance of Columbia’s internal Controls in the areas of - Effective and Efficient Operations – Safeguarding Assets, Reliable Reporting of Financials and Non-Financials and Compliance with Laws, Regulations, Standards, Tariff and Internal Policy.³
5. On May 3, 2022, the presiding administrative law judge issued PREHEARING ORDER #1. Order 21 *“That the parties are to confer amongst themselves in an attempt to resolve all or some of the issues associated with this proceeding. The parties are reminded it is the Commission's policy to encourage settlements. 52 Pa. Code §5.231(a). The parties are strongly urged to seriously explore this possibility. If a settlement is reached, a joint settlement petition executed by representatives of all parties to be bound thereby, together with statements in support of settlement by all signatory parties, must be filed with the Secretary for the Commission and served on the presiding officers.”* A process for an actual investigation was omitted.
6. On May 16, 2022, Christopher P. Pell, Deputy Chief Administrative Law Judge and John Coogan Administrative Law Judge issued PREHEARING ORDER #3.⁴

IT IS ORDERED:

1. *That the Motion to Suspend Columbia Gas of Pennsylvania Rate Case Hearings, Docket No. R-2022-3031211, Until Ordered Investigations, and Pennsylvania Constitutionally Required and Pennsylvania Statutorily [statutorily] Required Financial and Performance Audits Have Been Diligently Planned, Performed and Completed by a Competent, Independent and Experienced Audit Firm that Can Provide the Status – Material Weaknesses, Significant Deficiencies and a Level of Assurance of Columbia’s Internal Controls in the Areas of - Effective and Efficient Operations – Safeguarding Assets, Reliable Reporting of Financials and Non-Financials and Compliance with Laws, Regulations, Standards, Tariff and Internal Policy filed by **Richard C. Culbertson at docket number R-2022-3031211 is denied.** [Emphasis added.]*

³ <https://www.puc.pa.gov/pcdocs/1742782.pdf>

⁴ <https://www.puc.pa.gov/pcdocs/1744259.docx>

7. Culbertson’s subsequent attempts to fine out and determine the stated intension of the Commission’s order of April 14, 2022 failed. Clearly the Commission’s ALJ’s did not want to investigate and apparently the Commission.

B. Argument

The stated intentions of the Commission in its order of April 14, 2022 and its subsequent press release are that the Commission recognizes Columbia’s rates maybe illegal... and the Commission is going to find out – in essence they are “going check the bill”. “HARRISBURG – The Pennsylvania Public Utility Commission (PUC) voted today to investigate a rate increase request filed by Columbia Gas of Pennsylvania.”⁵ This rate case proceeding was never intended to satisfy the Commission’s Order of April 14, 2022. A black box settlement without investigation – is not an investigation.

The settlements do not comply with the Commission’s Order of April 14,2022. There has not been an investigation as to the “*lawfulness, justness, and reasonableness of the Columbia Gas of Pennsylvania, Inc. ’s existing rates, rules, and regulations.*” The settlements do not address the Commission’s concern “*lawfulness, justness, and reasonableness of the Columbia Gas of Pennsylvania, Inc. ’s existing rates, rules, and regulations.*” The proposed rates cannot be evaluated before the existing rates are investigated.

The emphasis of settlement in the **PREHEARING ORDER** #1: “21. That the parties are to confer *amongst themselves in an attempt to resolve all or some of the issues associated with this proceeding. The parties are reminded it is the Commission’s policy to encourage settlements.* [Emphasis added] 52 Pa. Code §5.231(a). The parties are strongly urged to seriously explore this possibility. *If a settlement is reached, a joint settlement petition executed by representatives of all parties to be bound thereby, together with statements in support of settlement by all signatory parties, must be filed with the Secretary for the Commission and served on the presiding officers.*” was wrong. The ALJ’s order does not supersede the three-member Commission’s order of April 14, 2022.

Pennsylvania Public Utility law Title 66 § 501. General powers, also supersedes the ALJ’s

⁵ <https://www.puc.pa.gov/press-release/2022/puc-to-investigate-proposed-rate-increase-by-columbia-gas>

order. A settlement in the rate case per the ALJ's order is voluntary. Obeying Pennsylvania law is not.

“(a) Enforcement of provisions of part --In addition to any powers expressly enumerated in this part, the commission shall have full power and authority, and it shall be its duty to enforce, execute and carry out, by its regulations, orders, or otherwise, all and singular, the provisions of this part, and the full intent thereof; and shall have the power to rescind or modify any such regulations or orders. The express enumeration of the powers of the commission in this part shall not exclude any power which the commission would otherwise have under any of the provisions of this part.

(b) Administrative authority and regulations. --The commission shall have general administrative power and authority to supervise and regulate all public utilities doing business within this Commonwealth. The commission may make such regulations, not inconsistent with law, as may be necessary or proper in the exercise of its powers or for the performance of its duties.

(c) Compliance.--Every public utility, its officers, agents, and employees, and every other person or corporation subject to the provisions of this part, affected by or subject to any regulations or orders of the commission or of any court, made, issued, or entered under the provisions of this part, shall observe, obey, and comply with such regulations or orders, and the terms and conditions thereof.”

The desire for expediency in rate cases does not override the law. It is not in the public interest to conduct rate cases ending with “black box” settlements devoid of compliance with the requirements placed upon the Commission in fulfilling its functions identified in Title 66 § 308.2 and other applicable laws, regulations and standards.

The most significant benefit for black box settlement for the Commission's is that the current high rates of Columbia have been partially attributable to the Commission's actions and a settlement avoids accountability. Pennsylvania law does not encourage not looking at the activities and financials of public utilities. On the contrary, Title 66 uses many internal control terms (some much more than others): “protect” (138), “determine” (62), “find” (121), “question” (31), “comply”

(50), “insure” (33), “ensure” (85), “assure” (8), “audit” (29), “efficient” (28), “reliable” (24), “enforce” (71), “duty” (32), “monitor” (18) investigate (9), “settlement” (5) and “black box” (0).

Page 5 of the settlement “*Under the Partial Settlement, with only a few select exceptions further explained herein, the settlement revenue requirement is a “black box” amount. In a “black box” settlement, parties do not specifically identify revenues, expenses and return that are allowed or disallowed.*” Black box settlements are illegal in Pennsylvania per PA Title 66 § 335. Initial decisions and release of documents.

*“[W]henver the commission conducts an investigation of an act or practice of a public utility and makes a decision, enters into a settlement with a public utility or takes any other official action, as defined in the Sunshine Act, with respect to its investigation, **it shall make part of the public record and release publicly any documents relied upon by the commission in reaching its determination.**”* [Emphasis added.]

Block box settlements circumvent internal controls placed in law to make public utilities and the Commission accountable for their actions – including omissions.

“Columbia believes that “black box” settlements facilitate agreements, as parties are not required to identify a specific return on equity or identify specific revenues and/or expenses that are allowed or disallowed.”

The Commission has a responsibility to and duty to audit, question and determine cost to be allowable or unallowable. The cost principles are federal mandates identified in 2 CFR 200, FAR Part 31 and 18 CFR 201, when applicable are not negotiable. The Commission does not have the lawful authority to make unallowable costs to be allowable.

The settlement includes IV. RESERVED ISSUES FOR LITIGATION

52. Simultaneous with the filing of this Partial Settlement, a separate Joint Petition for Non-Unanimous Settlement Regarding Revenue Allocation and Rate Design has been filed, with joinder or non-objection from all active parties other than OSBA and Mr. Culbertson. Issues regarding revenue allocation and rate design, other than the residential customer charge, are reserved for briefing. Also, Mr. Culbertson’s right to submit briefs on issues he properly preserved, and other parties’ right to respond, are retained.

Culbertson is entitled to due process before and during a rate case proceeding. Other participants agreeing to or not do not have the authority to either limit or expand his rights as a complainant in this rate case.

No proper investigation as ordered by the Commission must lead to no settlement and no rate increase.

There are things that are terribly wrong with the rate case process that needs to be identified and fixed. There are two questions that need to be answered, based upon the direction of this rate case. (1) Is there a form of judicial nullification in this proceeding? (2) Is the Commission being duplicitous? Telling the public one thing and telling or expecting the Commission's staff to do another.

I. Legal Analysis and Substantiation

Customers deserve better. The Culbertson Complaint⁶ was not addressed by Columbia with an investigation as required by CHAPTER 59. GAS SERVICE § 59.13. Complaints and the Commission did not enforce its own regulation as required 66Pa.C.S. 308.2 (11) *Take appropriate enforcement actions, including rate proceedings,*

The Commission should not be representing to the people that Columbia proposed, and existing rates may be unlawful – but the Commission will investigate. Then encourage a settlement that excludes Columbia's burden of proof and finding out if Columbia's rates are just, reasonable and lawful. If commercial endeavors – this would be termed as 'bait and switch'.

PA Title 66 § 501. General powers, provides substantial responsibilities on the Commission (enforce) and Columbia "*shall observe, obey, and comply with such regulations or orders*" – investigate in the rate case but not settle.

⁶ <https://www.puc.pa.gov/pcdocs/1743057.pdf>

Without investigations rates are not reliable as what are actual legitimate cost are unknow.

Rates should consider actual legitimate cost.

A deciding factor with Columbia's costs, are those cost actual legitimate costs and the applicability of the OMB's Cost Principles in 2 CFR 200.400 or the Federal Acquisition Regulations Part 31. These regulations have been vetted properly and define "reasonable costs". So if the 18 CFR 201 does not define reasonable cost, (about 1940 era regulation) these other Federal regulations do apply that guidance for governments, non-profits, and for-profit organizations. Columbia's accelerated costs are not actual legitimate costs; therefore those costs must be withdrawn from Columbia's rate base with appropriate adjustments in rates. Congress and OMB are the deciding organizations that determine what are allowable and unallowable costs in government-related arrangements, and DOE recognizes that in 2 CFR § 910.120 - Adoption of 2 CFR part 200.⁷

The rate making proceeding should be viewed like the game of baseball. There are parallels.

Baseball has rules, umpires, bases (levels of achievement); achievement requires the achievement of reaching prior bases. There are no short cuts to valid scores. Umpires are supposed to be impartial between the participants.

Just as in baseball there are prerequisites of the participants – there are internal controls for officials conducting the game and for the teams. Getting to first base in a rate proceeding requires submitting what could be actual legitimate cost. First to second are

⁷ <https://www.law.cornell.edu/cfr/text/2/910.120>

internal and external validations (audits and investigations) that costs are legitimate.

Second to third are internal management investigations responding to formal complaints, third to home are proceedings.

Like in baseball in the rate case, Columbia did not get to first base – accelerated costs are not actual legitimate cost. The costs were not audited according to applicable standards getting to second base and there were no internal investigations per the regulations established by the Commission in getting to third base.

So the team up at bat (Columbia), as before, decided to bypass running to first, second and third bases, they just ran from home plate directly to third base, hoping no one would notice and started heading home expecting to score. In the past this worked, and the game was officially entered into the record books and money was made and lost from the results. The opposing team and observes this time complained – Columbia did not reach first, second nor third bases and the replay shows they did not. Columbia's response – How about black box settlement, after all it is in the public interest, as was stated the black box settlement 93 times?

If only the public and rate players knew the game that was being played. A knowledgeable person who read the rule book of baseball would say whatever they are playing is not baseball and so it goes with a knowledgeable person who has read the rules of public utility rate making – this is not rate making.

Respectfully submitted by Richard C. Culbertson, Pro Se on September 12, 2022.

A handwritten signature in black ink, appearing to be 'R. L. ...' with a stylized flourish at the end.

September 12, 2022

eFile

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission :

v.

Docket No.: R-2022-3031211

Columbia Gas of Pennsylvania, Inc.

CERTIFICATE OF SERVICE

I hereby certify that I am serving the foregoing Objection to both black box settlements, dated September 2, 2022, in the manner and upon the persons listed below:

Served via Electronic Mail Only

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